

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK
UTICA CIVIL DIVISION**

CRYSTAL TAGLIALATELA,

Plaintiff,

vs.

**PERFORMANT RECOVERY,
INC.; and DOES 1 through 10,
inclusive,**

Defendants.

Civil Action No. 6:13-CV-1587 (GTS/TWD)

**COMPLAINT AND DEMAND
FOR JURY TRIAL**

COMPLAINT

I. INTRODUCTION

1. This is an action for actual and statutory damages brought by Plaintiff, Crystal Taglialatela (hereinafter “Plaintiff”), an individual consumer, against Defendant, Performant Recovery, Inc. (hereinafter “Defendant”), for violations of the law, including, but not limited to, violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”), which prohibits debt collectors from engaging in abusive, deceptive, and unfair practices.

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II. JURISDICTION

2. Jurisdiction of this court arises under 15 U.S.C. § 1692k(d) and 28 U.S.C. § 1337. Declaratory relief is available pursuant to 28 U.S.C. §§ 2201 and 2202. Venue in this District is proper in that the Defendant transacts business here.

III. PARTIES

3. Plaintiff, Crystal Taglialatela, is a natural person with a permanent residence in Northville, Fulton County, New York 12134.

4. Upon information and belief, the Defendant, Performant Recovery, Inc., is a corporation engaged in the business of collecting debts in this state and in several other states, with its principal place of business located at 333 North Canyons Parkway, Suite 100, Livermore, Alameda County, California 94551. The principal purpose of Defendant is the collection of debts in this state and several other states, and Defendant regularly attempts to collect debts alleged to be due to another.

5. Defendant is engaged in the collection of debts from consumers using the mail and telephone. Defendant regularly attempts to collect consumer debts alleged to be due to another. Defendant is a “debt collector” as defined by the FDCPA, 15 U.S.C. § 1692a(6).

IV. FACTUAL ALLEGATIONS

6. The debt that Defendant is attempting to collect on is an alleged obligation of a consumer to pay money arising out of a transaction in which the money, property, insurance or services which are the subject of the transaction are primarily for personal, family, or household purposes, whether or not such obligation has been reduced to judgment.

7. On or about December 28, 2012, Defendant called Plaintiff's grandmother at her phone number 518-773-5918 and requested her to deliver a message to Plaintiff to contact Defendant and that it was very important she call back. Plaintiff's grandmother is not a cosignor on the debt.

8. On or about January 14, 2013, Defendant, in connection with the collection of the alleged debt, called Plaintiff at 518-752-4045 and demanded payment on the alleged debt without also informing Plaintiff that Plaintiff could dispute the validity of the alleged debt and thereby overshadowed the Plaintiff's right to dispute the validity of the debt.

9. The natural consequences of Defendant's statements and actions were to produce an unpleasant and/or hostile situation between Defendant and Plaintiff.

V. FIRST CLAIM FOR RELIEF

10. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.

11. Defendant violated the FDCPA. Defendant's violations include, but are not limited to, the following:

- (a) Defendant violated §1692c(b) of the FDCPA by contacting a third party in connection with the collection of the alleged debt without the consent of the Plaintiff and the contact was not in a manner covered by §1692b of the FDCPA; and
- (b) Defendant violated §1692e of the FDCPA by using a false, deceptive, or misleading representation or means in connection with the collection of the alleged debt; and
- (c) Defendant violated §1692e(10) of the FDCPA by using false representation or deceptive means in connection with the collection of the alleged debt; and
- (d) Defendant violated §1692g(b) of the FDCPA by overshadowing or being inconsistent with the disclosure of the consumer's rights to dispute the debt or request the name and address of the original creditor.

12. Defendant's acts as described above were done intentionally with the purpose of coercing Plaintiff to pay the alleged debt.

13. As a result of the foregoing violations of the FDCPA, Defendant is liable to the Plaintiff, Crystal Taglialatela, for statutory damages, costs and attorney fees.

VI. SECOND CLAIM FOR RELIEF

14. Plaintiff repeats and realleges and incorporates by reference to the foregoing paragraphs.

15. The acts, practices and conduct engaged in by the Defendant and complained of herein constitute “deceptive acts and practices” within the meaning of Article 22A of the General Business Law of the State of New York, NY CLS GBL § 349.

16. Defendants willfully and knowingly engaged in conduct constituting deceptive acts and practices in violation of NY CLS GBL § 349.

17. By virtue of the foregoing, Plaintiff is entitled to injunctive relief enjoining Defendant from the unlawful acts and practices. NY CLS GBL § 349(h).

18. By virtue of the foregoing, Plaintiff is entitled to recover trebled, or fifty dollars (\$50.00) whichever is greater together with reasonable attorney fees. NY CLS GBL § 349(h).

WHEREFORE, Plaintiff respectfully requests that judgment be entered against Defendant, Performant Recovery, Inc., for the following:

- A. Defendant's conduct violated the FDCPA and TDCPA.
- B. Statutory damages.
- C. Costs and reasonable attorney fees.
- D. Awarding Plaintiff any pre-judgment and post-judgment interest as may be allowed under the law.
- E. For such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

PLEASE TAKE NOTICE that Plaintiff, Crystal Tagliatela, demands trial by jury in this action.

DATED: December 26, 2013

RESPECTFULLY SUBMITTED,

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